

§ 38.620

38 CFR Ch. I (7–1–14 Edition)

approving interment or memorialization; or

(2) If the cemetery director believes that there is clear and convincing evidence that the deceased committed a Federal or State capital crime of which he or she was not convicted due to death or flight to avoid prosecution, the cemetery director will forward a request for a finding on that issue, together with the cemetery director's recommendation and a copy of the record to the Under Secretary for Memorial Affairs.

(f) *Finding by the Under Secretary for Memorial Affairs.* Upon receipt of a request from the cemetery director under paragraph (e) of this section, the Under Secretary for Memorial Affairs will make a finding concerning whether the deceased committed a Federal or State capital crime of which he or she was not convicted by reason of unavailability for trial due to death or flight to avoid prosecution. The finding will be based on consideration of the cemetery director's recommendation and the record supplied by the cemetery director.

(1) A finding that the deceased committed a crime referred to in paragraph (f) of this section must be based on clear and convincing evidence.

(2) The cemetery director will be provided with written notification of the finding of the Under Secretary for Memorial Affairs.

(g) *Decision after finding.* Upon receipt of notification of the finding of the Under Secretary for Memorial Affairs, the cemetery director will make a decision on the request for interment or memorialization pursuant to 38 U.S.C. 2411. In making that decision, the cemetery director will be bound by the finding of the Under Secretary for Memorial Affairs.

(h) *Notice of decision.* The cemetery director will provide written notice of the finding of the Under Secretary for Memorial Affairs and of a decision under paragraph (b), (e)(1), or (g) of this section. With notice of any decision denying a request for interment or memorialization, the cemetery director will provide written notice of appellate rights to the personal representative of the deceased, in accordance with § 19.25 of this title. This will include notice of

the opportunity to file a notice of disagreement with the decision of the cemetery director and the finding of the Under Secretary for Memorial Affairs. Action following receipt of a notice of disagreement with a denial of eligibility for interment or memorialization under this section will be in accordance with §§ 19.26 through 19.38 of this title.

(Authority: 38 U.S.C. 512, 2411)

§ 38.620 Persons eligible for burial.

The following is a list of those individuals who are eligible for burial in a national cemetery:

(a) Any veteran (which for purposes of this section includes a person who died in the active military, naval, or air service).

(b) Any member of a Reserve component of the Armed Forces, and any member of the Army National Guard or the Air National Guard, whose death occurs under honorable conditions while such member is hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted or incurred under honorable conditions while such member is performing active duty for training, inactive duty training, or undergoing that hospitalization or treatment at the expense of the United States.

(c) Any Member of the Reserve Officers' Training Corps of the Army, Navy, or Air Force whose death occurs under honorable conditions while such member is—

(1) Attending an authorized training camp or on an authorized practice cruise;

(2) Performing authorized travel to or from that camp or cruise; or

(3) Hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted or incurred under honorable conditions while such member is—

(i) Attending that camp or on that cruise;

(ii) Performing that travel; or

(iii) Undergoing that hospitalization or treatment at the expense of the United States.

(d) Any person who, during any war in which the United States is or has been engaged, served in the armed forces of any government allied with

Department of Veterans Affairs

§ 38.620

the United States during that war, whose last such service terminated honorably, and who was a citizen of the United States at the time of entry on such service and at the time of his or her death.

(e) The spouse, surviving spouse, minor child, or unmarried adult child of a person eligible under paragraph (a), (b), (c), (d), or (g) of this section. For purposes of this section—

(1) A surviving spouse includes a surviving spouse who had a subsequent remarriage;

(2) A minor child means an unmarried child under 21 years of age, or under 23 years of age if pursuing a full-time course of instruction at an approved educational institution; and

(3) An unmarried adult child means a child who became permanently physically or mentally disabled and incapable of self-support before reaching 21 years of age, or before reaching 23 years of age if pursuing a full-time course of instruction at an approved educational institution.

(f) Such other persons or classes of persons as may be designated by the Secretary.

(g) Any person who at the time of death was entitled to retired pay under chapter 1223 of title 10, United States Code, or would have been entitled to retired pay under that chapter but for the fact that the person was under 60 years of age.

(h) Any person who:

(1) Was a citizen of the United States or an alien lawfully admitted for permanent residence in the United States at the time of their death; and

(2) Resided in the United States at the time of their death; and

(3) Either was a—

(i) Commonwealth Army veteran or member of the organized guerillas—a person who served before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines, while such forces were in the service of the Armed Forces of the United States pursuant to the military order of the President dated July 26, 1941, including organized guerilla forces under commanders appointed, designated, or subsequently recognized by the Commander in Chief, Southwest Pacific Area, or other competent au-

thority in the Army of the United States, and who died on or after November 1, 2000; or

(ii) New Philippine Scout—a person who enlisted between October 6, 1945, and June 30, 1947, with the Armed Forces of the United States with the consent of the Philippine government, pursuant to section 14 of the Armed Forces Voluntary Recruitment Act of 1945, and who died on or after December 16, 2003.

(i)(1) Any biological or legally adoptive parent who dies on or after October 13, 2010, and whose deceased child:

(i) Is a veteran who dies on or after October 7, 2001, and

(A) Except as provided in paragraph (i)(2) of this section, dies as the direct result of hostile action with the enemy, while in combat, while in transit to or from a combat mission if the cause of death is directly related to hostile action, or while hospitalized or undergoing treatment at the expense of the United States for injury incurred during combat; or

(B) Is killed mistakenly or accidentally by friendly fire that was directed at a hostile force or what was thought to be a hostile force; or

(C) Died from a training-related injury while performing authorized training activities in preparation for a combat mission;

(ii) Is interred in a national cemetery; and

(iii) Has no spouse or child who is buried, or surviving spouse or child who, upon death, may be eligible for burial, in a national cemetery under paragraph (e) of this section.

(2) A parent is not eligible for burial if the veteran dies due to the elements, a self-inflicted wound, combat fatigue, or a friendly force while the veteran was in an absent-without-leave, deserter, or dropped-from-rolls status or was voluntarily absent from a place of duty.

(3)(i) A parent may be buried only within the veteran child's gravesite.

(ii) No more than two parents are eligible for burial per deceased veteran child.

(4) Parent burial eligibility is subject to a determination by the Secretary

§ 38.621

that there is available space within the veteran's gravesite.

(Authority: 38 U.S.C. 107, 501, 2402)

[70 FR 4769, Jan. 31, 2005, as amended at 77 FR 4678, Jan. 31, 2012]

§ 38.621 Disinterments.

(a) Interments of eligible decedents in national cemeteries are considered permanent and final. Disinterment will be permitted only for cogent reasons and with the prior written authorization of the National Cemetery Area Office Director or Cemetery Director responsible for the cemetery involved. Disinterment from a national cemetery will be approved only when all living immediate family members of the decedent, and the person who initiated the interment (whether or not he or she is a member of the immediate family), give their written consent, or when a court order or State instrumentality of competent jurisdiction directs the disinterment. For purposes of this section, "immediate family members" are defined as surviving spouse, whether or not he or she is remarried; all adult children of the decedent; the appointed guardian(s) of minor children; and the appointed guardian(s) of the surviving spouse or of the adult child(ren) of the decedent. If the surviving spouse and all of the children of the decedent are deceased, the decedent's parents will be considered "immediate family members."

(b) All requests for authority to disinter remains will be submitted on VA Form 40-4970, Request for Disinterment, and will include the following information:

(1) A full statement of reasons for the proposed disinterment.

(2) Notarized statement(s) by all living immediate family members of the decedent, and the person who initiated the interment (whether or not he or she is a member of the immediate family), that they consent to the proposed disinterment.

(3) A notarized statement, by the person requesting the disinterment that those who supplied affidavits comprise all the living immediate family members of the deceased.

(Authority: 38 U.S.C. 2404)

38 CFR Ch. I (7-1-14 Edition)

(c) In lieu of the documents required in paragraph (b) of this section, an order of a court of competent jurisdiction will be considered.

(d) Any disinterment that may be authorized under this section must be accomplished without expense to the Government.

(The reporting and recordkeeping requirements contained in paragraph (b) have been approved by the Office of Management and Budget under OMB control number 2900-0365)

§ 38.629 Outer Burial Receptacle Allowance.

(a) *Definitions—Outer burial receptacle.* For purposes of this section, an outer burial receptacle means a graveliner, burial vault, or other similar type of container for a casket.

(b) *Purpose.* This section provides for payment of a monetary allowance for an outer burial receptacle for any interment in a VA national cemetery where a privately-purchased outer burial receptacle has been used in lieu of a Government-furnished graveliner.

(c) *Second interments.* In burials where a casket already exists in a grave with or without a graveliner, placement of a second casket in an outer burial receptacle will not be permitted in the same grave unless the national cemetery director determines that the already interred casket will not be damaged.

(d) *Payment of monetary allowance.* VA will pay a monetary allowance for each burial in a VA national cemetery where a privately-purchased outer burial receptacle was used on and after October 9, 1996. For burials on and after January 1, 2000, the person identified in records contained in the National Cemetery Administration Burial Operations Support System as the person who privately purchased the outer burial receptacle will be paid the monetary allowance. For burials during the period October 9, 1996 through December 31, 1999, the allowance will be paid to the person identified as the next of kin in records contained in the National Cemetery Administration Burial Operations Support System based on the presumption that such person privately purchased the outer burial receptacle (however, if a person who is not listed as the next of kin provides